

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SHEILA A.,

Claimant,

vs.

PORTERVILLE DEVELOPMENTAL
CENTER,

Service Agency.

OAH No. 2011070532

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Porterville, California, on December 7, 2011.

Porterville Developmental Center (PDC) was represented by Norris Edwards, Director, Office of Performance Excellence.

Claimant represented herself with assistance from Carrie Brown, Clients Rights Advocate.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

Does PDC have good cause to deny claimant's right to have communication with her father and/or her father's girlfriend?

FACTUAL FINDINGS

1. Claimant is a twenty-three-year-old young woman eligible for PDC services based on a diagnosis of mild mental retardation. She has also been diagnosed with impulse control disorder and post traumatic stress disorder. Claimant has been receiving services from PDC pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)¹

2. Claimant's parents divorced when she was young and she and her brother lived with their father. When claimant began having difficulties at school, a behaviorist visiting the home discovered that the children were living in a tent outside the father's trailer home, and a subsequent investigation discovered that claimant was sexually abused by her father from approximately age eight to sixteen.

Claimant lived with her mother for some time after being removed from her father's care. Aggressive and eloping behaviors eventually led to commitment to Sierra Vista Developmental Center on December 5, 2006. She was admitted to PDC on August 19, 2009, due to the pending closure of the Sierra Vista facility.

3. In 2008, claimant's father was convicted in Kern County Superior Court on numerous counts including "lewd or lascivious acts w/child under 14 years" and "possession of matter depicting minor engaged in sexual conduct." He was sentenced to State Prison for 375 years to life. The gravity of the crimes is reflected in the conviction and sentencing.

4. A Restraining Order was issued that prevented claimant's father from having any contact with her. The Restraining Order expired on August 15, 2010. Within a week after expiration of the Order, claimant's father contacted the facility in an attempt to make contact. On August 27, 2010, a special Individual Program Plan (IPP) meeting was held to discuss implementation of a denial of rights to prevent claimant's contact with her father.

5. Claimant's attorney submitted a request to the court to reinstate the restraining order. The public defender requested that claimant attend a court hearing on the matter but the IPP team felt it would be detrimental to her emotional state to attend. Therefore, the team agreed to withdraw the request for the restraining order. In order to protect claimant, it was agreed that a denial of rights to prevent contact with her father would be initiated immediately.

6. In December 2010, Claimant was stabilized and provisionally transferred to a lower level of care, Sanger Place Mental Health Rehabilitation Center, to prepare for moving back into the community. That placement was unsuccessful and she was readmitted to PDC in April, 2011.

While at Sanger Place, claimant was allowed contact with her father and his girlfriend.

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

7. Upon claimant's readmission to PDC, a denial of rights was re-implemented prohibiting contact with her father. Claimant's 30-day IPP dated May 24, 2011, included the following Denial of Rights information:

In the best interest of [claimant], a denial of rights was initiated to have no contact with her father including phone, letters, photos, e-mail, etc. This includes no contact through intermediaries. Staff checks her mail and packages for any items going to and being sent from prison or friends addresses. Her phone calls are closely monitored when staff has a reason to suspect [claimant] may be talking to her father or to any friend acting as an intermediary.

While on provisional placement [claimant] was allowed contact with the father via letters. She was also in contact with [father's girlfriend]. The team believes that this contact was detrimental to [claimant's] emotional state and is part of the reason she failed in her placement.

8. At the May 24, 2011 IPP meeting, the team discussed the behaviors and issues claimant was having at Sanger Place prior to returning to PDC. They included self injurious behaviors (cutting her arms and legs multiple times, property destruction (punching holes in the walls, breaking furniture, etc.), causing major damage to the facility, and she was physically/verbally assaultive. Due to her behavioral crisis, she was first transferred to College Hospital, where her maladaptive behavior continued.

9. Claimant contends that her problem behaviors were due to the facility and not from having contact with her father and his girlfriend. The IPP states that "it is clear that her aggression and suicidal attempts did continue and escalated after making contact with [father]. In the past, after displaying maladaptive behaviors, [claimant] reported she was thinking of her dad, feeling guilty for not having contact with him, and feelings that it is her fault that he is in prison."

10. Claimant requested a Fair Hearing to contest the Denial of Rights. On May 26, 2011, at an informal fair hearing on the matter, she was granted supervised contact with her father via letter, but no contact with [father's girlfriend].

11. Claimant then began receiving manipulative and inappropriate letters from her father and his girlfriend. The father's letters recalled events, with some specifics and tended to minimize the abuse. An example includes, "all my family don't like what happen but things happen without thinking and in bad times, yes I know what I did and I know why, for parts of it was to teach you or Mary when either of you asked a question on things, all I could do is show you and hope you would not like it..." He discussed events with various people as well as videos and pictures.

The girlfriend was attempting to influence [claimant] to forgive her father by minimizing the sexual abuse and stating that the punishment is too severe and that he does not deserve to be in prison for life. She also sent claimant a letter, asking her to re-write it in her own handwriting, directed toward the Court of Appeals and Governor Brown seeking a pardon. The letter sought to solicit false testimony to the court. The girlfriend also discussed how claimant could help them to “be together as a family.”

12. The IPP team concluded on June 24, 2011, that “contact with the father is detrimental to [claimant] and is interfering with her programming, as evidenced by [claimant’s] disruptive/aggressive behavior.” At this time the team agreed to stop all contact with the father and [girlfriend]. The team members “strongly feel that contact with the father and [girlfriend] is emotionally disturbing to [claimant] and is steering [sic] guilt feelings that she is responsible for his incarceration.”

13. On July 13, 2011, PDC issued a Notice of Proposed Action (NOPA) to claimant, proposing “Fair Hearing proceedings with ALJ” to “discuss issues relative to Fair Hearing Request filed by claimant.” Claimant filed a Fair Hearing Request, received by PDC on that same date, requesting to “talk to my dad and [girlfriend].”

14. Michael Yamada is a PDC staff psychologist. He testified to the effects of claimant’s physical and sexual abuse and her continuing post traumatic stress disorder. He explained how, as a result of her traumatic experiences, contact with her abuser results in self injurious and aggressive behaviors.

15. Sally Rodriquez is claimant’s Clinical Social Worker at PDC. She testified that when the restraining order against claimant’s father expired, he made numerous attempts by letter and through a girlfriend to make contact with claimant. She testified that, “although claimant is an adult, she is unable to make or understand legal and healthy decisions due to the past trauma endured and mental state. When [claimant] has received letters from [father], her behaviors did decompensate interfering with her treatment. Letters from [father] and his girlfriend are requests and pressure for [claimant] to write to the appellate court and to Governor Brown so [father’s] sentence can be reduced and statements that they will be united as a family. In addition, both [father] and girlfriend are minimizing the crimes against her. Contact with [father] has been detrimental to the victim’s emotional state and part of the reason for past failed placement outside of this facility.”

16. Ms. Rodriquez explained that claimant was granted monitored contact with her father, by letter only, at an Informal Fair Hearing on May 26, 2011. After that time she demonstrated numerous maladaptive behaviors.

The Denial of Right was reinstated on June 24, 2011, which “includes no contact by [father], [girlfriend] or any other individual/contact acting for dad including family members by letter, visits, phone calls, e-mail or to receive possessions from dad.”

17. Claimant testified that the reason she “didn’t make it in the new placement at Sanger Place and had to come back” was because “the placement wasn’t right”, not because of having contact with her father. She is seeking contact with her father and contends that “it feels like he’s all I got left in my family, because he’s the only one that worries about me a lot. My other family members they just use me and they don’t respect me like my father does.”

She acknowledged his crimes against her and provided the following statement:

I know what my father did was very wrong. I don’t forgive him because he is my dad. I forgive him because I know everyone makes mistakes. Nobody is perfect. I still want to talk to my dad. My dad was the one that raise [sic] my brother and I since we were born. And he was the only parent that was around to make sure we did everything we surpo [sic] to do.

18. Claimant provided the following list of “The reasons I want to talk to my dad:”

When other people gave up on me he stood by my side.

He taught me between right and wrong.

He was always there when I needed to talk.

He made sure I got my education so I could have a good job and I could be smart.

I’m the person I am today because of my father.

He was strict with me when he needed to be and I’m thankful for that.

LEGAL CONCLUSIONS

1. Section 4503 provides that a person who has been committed to a developmental center has certain established rights which include the following:

(c) To see visitors each day.

(d) To have reasonable access to telephones, both to make and receive confidential calls.

(e) To have ready access to letterwriting material, including stamps, and to mail and receive unopened correspondence².

Section 4504, however, provides that the professional person in charge of the facility or his designee may, for good cause, deny a person any of the rights specified under subdivisions (a) through (e) of Section 4503.

2. The evidence demonstrates that is in claimant's best interest to deny her right to communicate with her father and/or his girlfriend. The denial is reasonable to minimize ongoing harm to claimant in light of her history with her father and her inability to fully comprehend the gravity of the crimes and the manipulation and motives behind the current contacts. Contact has been shown to cause her behaviors to decompensate and to be detrimental to her treatment and well being. No less restrictive means of protecting claimant is available at this time.

Therefore, it is determined that PDC has good cause to deny claimant's right to communicate with her father and his girlfriend.

ORDER

Claimant's appeal from the Porterville Developmental Center's denial of rights is denied.

DATED: December 19, 2011

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)

² The Department of Developmental Services has adopted implementing regulations for this provision of the code. Cal. Code Regs., tit. 17 § 50510 subd. (b)(5), (6) and (7).